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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/526,357	03/16/2000	Lecon Woo	1417Y P 415	2552

7590

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EXAMINER

MULLIS, JEFFREY C

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 07/29/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/526,357

Applicant(s)

WOO ET AL.

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-103 is/are pending in the application.
- 4a) Of the above claim(s) 2-15, 17, 28-32, 43-47, 62-66, 70, 70-83, 85 and 96 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 16 18-27 33-42 48-61 67- 69 84 86-95 101-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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Applicants' references DE 4142271 and French Patent 2688511 have not been considered since these foreign language references have not been submitted with a concise explanation of their relevance, MPEP § 609.

Applicant's election without traverse of the species of first component of ethylene/alphaolefin copolymers wherein alphaolefin has 4-8 carbons as well as the second component of propylene and alphaolefin copolymer wherein the alphaolefin has 2 carbons and processes which include radiation treatment in Paper No. 8 is acknowledged.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 16, 18-21, 23-27, 33-36, 38-42, 48-55, 57-61, 67, 68, 69, 84, 86-89, 91-95 and 101-103 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Babrowicz et al. (WO 97/36741).

Babrowicz et al. disclose a process for producing films in which a film containing the blend of polyolefin such as "PE2" metallocene generated ethylene/octene copolymer having a density of 0.901 and EPDM as in applicants' propylene containing polymers is irradiated. Note page 32 line 5 as well as Examples 10-16 on pages 38 and 39 in which radiation is used using applicants' level of radiation. With regard to applicants' claims which require a blend of propylene polymers, applicants' specification at the paragraph at the top of page 11 indicates that the only difference between the two polymers may be molecular weight. Note that Table 3 on page 37 which discloses that the EPDM's are polydispersed. With regard to melting points, the term "about" allows for a leeway in amount comparable to 10°C and hence even a miniscule difference in melting points such as that due to the normal heterogeneity of polymer samples would embrace applicants' temperature differences. Note that the material may be used as a heat seal at page 4 line 25. Since applicants' claims recite identical materials to that used in the patent and both applicants and patentees utilize electron beam cross-linking,

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applicants' and patentees' characteristics would reasonably appear to be the same.

Product-by-process claims are not rejected using the approach set out in Graham v. Deere. It is applicant's burden to show that there is a non-obvious difference between the product of a product-by-process claim and a prior art product which reasonably appears to be the same or only slightly different whether or not the prior art product is produced in the same manner as the claimed product. Note In re Marosi, 218 USPQ 289, 292-293 (CAFC 1983); In re Brown, 173 USPQ 685 (CCPA 1972) and In re Thorpe, 227 USPQ 964 (CAFC 1985) in this regard.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

M Claims 22, 37, 56, 71 and 90 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Babrowicz et al., cited above.

Note that the polypropylene or ethylene propylene may be used in the composition at page 21 lines 19-25. Since polypropylene as the term is used by those skilled in the art would contain close to 100% propylene and since ethylene

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propylene copolymers would contain large amounts of ethylene as would be understood by those skilled in the art, it would appear that patentees disclose propylene polymers having less than applicants' range of ethylene as well as more than applicants' range of ethylene. The patent does not disclose specifically propylene polymers containing 1-6 weight percent of ethylene.

It would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to use propylene polymers containing 1-6% ethylene in the process and composition of patentees since patentees disclose propylene containing polymers containing more and less propylene than this and thus implying that any amount of ethylene is workable and in the expectation of adequate results absent any showing of surprising or unexpected results.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc

July 25, 2002

Jeffrey Mullis  
Primary Examiner  
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